FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FAMILY COURT APPEAL NO.92 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Coram : H.L.Gokhale &
R.S.Mohite,JJ

Date : 21.12.2004.

PC

. Heard Mr.S.A. Bhagwat for the appellant. Mr.P.B. Shah appears for the respondent. Respondent is also present in person. An explanation was sought from the IInd Joint Civil Judge, Senior Division, Pune for non service of the notice on the respondent. He has furnished the explanation. We accept the same. In fact, as noted above, Mr.Shah appears for the respondent in view of the notice.

1. This appeal seeks to challenge the order passed by

the Judge of the Family court of Pune on 7.6.2004 below the main Petition bearing No.A 501/2003 filed by the appellant-husband. The learned Judge has held that the said petition did not disclose any cause of action and therefore, rejected the same under Order 7 Rule 11 of CPC.

2. The short facts leading to this appeal are as follows :- The appellant and the respondent were married on 9.9.2000 at Pune. It appears that after some time, the parties developed differences and the respondent-wife filed Petition No.31 of 2002 in the Court of 1st Family Judge at Pune seeking a decree of nulity of her marriage under Section 18 r/w 19 of the Indian Divorce Act 1869. She contended that her consent for that marriage was obtained by fraud. The proceedings were served on the appellant here-in who was then in Canada. He however, chose not to remain

present. After waiting for some time, the learned Judge ultimately granted the decree as prayed for in the petition. He declared that the marriage was null and void. That Judgment and order was passed on 23.5.2002.

3. It is the case of the appellant that the allegation viz. that the consent of the respondent was obtained by fraud was not true and correct statement of fact. However, as noted above, he did not remain present before the Judge who was having the jurisdiction over the matter. Not only that but he did not move for setting aside that order nor did he file any appeal. He chose to file this new Petition bearing No.501/2003 wherein he also prayed that his marriage with the appellant was null and void on the ground that she had been married earlier with somebody else. The learned Judge of the Family court has

looked into that application and has noted that the decree which was obtained earlier was holding the field unless the same was set aside. The prayer under Section 44 of the Evidence Act was not maintainable. Learned Judge noted that the earlier proceeding was duly served on the appellant. He also noted in his order that there is no cause of action in as much as the marriage between the two was already held null and void.

4. There is no monetory expectation of the respondent in any manner and there is no issue from this marriage. In these circumstances, in our view, there are no reasons to interfere with the order passed by the learned Judge which interference will only be for the satisfaction of the ego of the appellant here-in. No reasons to interfere. Appeal is rejected.

(H.L.Gokhale,J)

(R.S.Mohite,J)